

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NELSON LLAVATA,

Plaintiff,

vs.

COLE MORROW, *et al.*,

Defendants.

Case No. 2:11-cv-00250-GMN-CWH

ORDER

This matter is before the Court on Plaintiff's Motion for Subpoena Duces Tecum (#80), filed November 14, 2012.

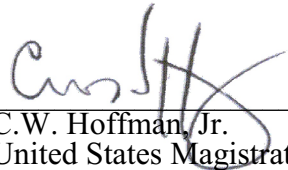
Plaintiff requests that the Court authorize issuance of a Rule 45 subpoena duces tecum for purposes of obtaining his medical records. Plaintiff is proceeding *in forma pauperis*. The authorization of a subpoena duces tecum requested by an *in forma pauperis* plaintiff is subject to limitations. *Alexander v. California Dep't of Corrections*, 2010 WL 5114931 (E.D. Cal). Because personal service of a subpoena duces tecum is required under Rule 45(b), "[d]irecting the Marshal's Office to expend its resources personally serving a subpoena is not taken lightly by the court." *See Frazier v. Redding Police Dep't*, 2012 WL 5868573 (E.D. Cal.) (citing *Austin v. Winett*, 2008 WL 5213414 (E.D. Cal.)). "Limitations include the relevance of the information sought as well as the burden and expense to the non-party in providing the requested information." *Id.* (citations omitted). Normally, a motion for issuance of subpoena duces tecum should clearly identify the documents sought and show that the records are only obtainable through the identified third-party. *Id.* Non-parties are "entitled to have the benefit of [the] Court's vigilance" in ensuring the non-party does not suffer excessive or unusual expenses in complying with a subpoena duces tecum. *Id.*

1 (citing *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa. 1991)).

2 Shortly after Plaintiff filed his motion, Defendants filed a motion for summary judgment.
3 See Defs' Mot. (#83). Defendants also filed a motion for leave to file Plaintiff's medical records
4 under seal as an exhibit to the summary judgment motion in order to ensure confidentiality and
5 prevent the entry of Plaintiff's medical records into the public record. (#84). Defendants also
6 represented that they would send a copy of the records to the facility where Plaintiff is in custody
7 "with instructions to maintain the records in a safe and secure place outside of Plaintiff's
8 immediate possession and to permit Plaintiff to review the exhibit by appointment pursuant to
9 applicable administrative procedures." *Id.* at 2:5-7. Consequently, it appears that Plaintiff's
10 request for a Rule 45 subpoena is moot as his medical records are available for his review at the
11 facility where he is currently housed. Accordingly,

12 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Subpoena Duces Tecum (#80) is
13 **denied as moot.**

14 DATED this 9th day of January, 2013

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17 C.W. Hoffman, Jr.
18 United States Magistrate Judge
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